

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**GREGORY S. LAWSON**  
Claimant

VS.

**CITY OF KANSAS CITY, KANSAS**  
Respondent  
Self-Insured

)  
)  
)  
)  
)  
)  
)

Docket No. 170,193

**ORDER**

Claimant appealed from an Order of Administrative Law Judge Alvin E. Witwer dated January 8, 1996 that denied claimant's request for assessment of civil penalties against the respondent.

**APPEARANCES**

Claimant appeared by his attorney, Paul E. Serrano, Jr. of Kansas City, Kansas. Respondent, a qualified self-insured, appeared by its attorney, Mary Eileen Mallon of Kansas City, Kansas.

**ISSUES**

Claimant requested the Appeals Board to review whether the Administrative Law Judge erred in not ordering respondent to pay medical expenses previously awarded in this matter and whether he erred in not assessing civil penalties against respondent pursuant to K.S.A. 44-512a.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and hearing the arguments of the parties, the Appeals Board finds as follows:

The Appeals Board has jurisdiction to review this Order. An order either granting or denying penalties pursuant to K.S.A. 44-512a is a final order, and therefore subject to de novo review on the record on written request made within ten days from entry of the

order. K.S.A. 44-551. See also Waln v. Clarkson Constr. Co., 18 Kan. App. 2d 729, 861 P.2d 1355 (1993) and Stout v. Stixon Petroleum, 17 Kan. App. 2d 195, 836 P.2d 1185, rev. denied 251 Kan. 942 (1992). A final Award was entered by the Administrative Law Judge in this case on December 6, 1994 that denied claimant compensation, finding that claimant's accidental injury did not arise out of and in the course of his employment with the respondent. Claimant timely requested a review of that Award by the Appeals Board. Thereafter, in an Order dated April 12, 1995, the Appeals Board found claimant's claim compensable and granted claimant's request for medical expenses in the amount of \$2,350. Respondent timely appealed the Appeals Board Order to the Kansas Court of Appeals on May 9, 1995. That appeal is presently pending before the appellate court.

On October 26, 1995, claimant filed a demand on the respondent pursuant to K.S.A. 44-512a for payment of the medical expenses awarded by the Appeals Board. On November 7, 1995, the respondent answered and declined to pay the medical expenses. Thereafter, claimant filed an Application for Penalties pursuant to K.S.A. 44-512a before the Administrative Law Judge.

A hearing was held before the Administrative Law Judge on the Application for Penalties on January 5, 1996. The Administrative Law Judge denied claimant's request in the Order that is the subject of this appeal. The Administrative Law Judge refused to order the payment of the medical expenses and refused to assess penalties against the respondent, finding that the provisions of K.S.A. 1995 Supp. 44-556(b) and (g) stayed the payment of medical expenses pending the decision of the Kansas Court of Appeals. Claimant argued that the provisions of K.S.A. 1995 Supp. 44-556(b) and (g) when read together are ambiguous. It is claimant's position that the word "compensation" contained in K.S.A. 1995 Supp. 44-556(b) not only means weekly disability payments, but also includes medical compensation. Accordingly, the claimant asserted that the \$2,350 of medical expenses awarded in this matter should be required to be paid pending the decision of the Kansas Court of Appeals.

When an order is appealed from the Appeals Board to the Kansas Court of Appeals, the provisions of K.S.A. 1995 Supp. 44-556 apply. The payment of weekly disability compensation benefits or medical compensation awarded pursuant to an Appeals Board Order while an appeal is pending with the Kansas Court of Appeals is controlled by K.S.A. 1995 Supp. 44-556(b) and (g) which provide as follows:

"(b) Commencement of an action for review by the court of appeals shall not stay the payment of compensation due for the ten-week period next preceding the board's decision and for the period of time after the board's decision and prior to the decision of the court of appeals on review.

....

"(g) In any case in which any review is sought under this section and in which the compensability is not an issue to be decided on review, medical compensation shall be payable and shall not be stayed pending such review. The worker may proceed under K.S.A. 44-534a and amendments thereto and may have a hearing in accordance with that statute to enforce the provisions of this subsection."

The question that is now before the Appeals Board involves the interpretation of a statute which is a question of law. Seabourn v. Coronado Area Council Boy Scouts of America, 257 Kan. 178, 891 P.2d 385 (1995); State v. Heffelman, 256 Kan. 384, 886 P.2d 823 (1994). One of the questions that must be answered before deciding whether the medical expenses awarded in this matter should be paid while an appeal is pending before the court of appeals, is what is included in the phrase "payment of compensation" as it pertains to Subsection (b) of K.S.A. 1995 Supp. 44-556. "Payment of compensation," as used in the Workers Compensation Act, has been held to include furnishing and paying for medical treatment. See Kraisinger v. Mammel Food Stores, 203 Kan. 976, 983, 457 P.2d 678 (1969). In the case of Page v. General Motors Corporation, 210 Kan. 699, 504 P.2d 153 (1972), the court interpreted language similar to K.S.A. 1995 Supp. 44-556(b) to require the stay of payments of all compensation awarded, during an appeal to the district court, except for weekly disability payments due and medical expenses incurred during the ten-week period next preceding the director's decision and for the period of time after the director's decision and prior to the decision of the district court. In that case, claimant made a demand upon the respondent for payment of medical expenses that had accrued prior to the ten-week period next preceding the director's award. The court held that since the medical expense award was not for expenses incurred during the non-stayed period, as set out in the provisions of K.S.A. 1971 Supp. 44-556, that payment of such medical expenses was stayed by respondent's appeal and not payable until the decision of the district court.

Subsection (g) was added to K.S.A. 44-556 effective July 1, 1990. The Appeals Board finds that the intent of the legislature by adding Subsection (g) was to provide for payment of all medical expenses awarded if compensability was not at issue. This would include medical expenses incurred prior to the ten-week period next preceding the Appeals Board decision. Regardless of whether compensability is an issue, Subsection (g) does not change prior case law that found medical expenses to be included within the phrase "payment of compensation." Accordingly, both medical expenses and weekly disability payments due are to be paid during the pendency of an appeal from the Appeals Board to the Kansas Court of Appeals only for the ten-week period next preceding the Appeals Board order and until the decision of the Kansas Court of Appeals.

The issue on appeal to the Kansas Court of Appeals in this matter pertains to compensability. The issue is whether claimant suffered personal injury by accident that arose out of and in the course of his employment. Accordingly, payment of the \$2,350 for medical expenses is stayed pending a final disposition of the appeal.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Alvin E. Witwer dated January 8, 1996 which denied assessment of penalties against the respondent should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1996.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c: Paul E. Serrano, Jr., Kansas City, KS  
Mary Eileen Mallon, Kansas City, KS  
Alvin E. Witwer, Administrative Law Judge  
Philip S. Harness, Director